

200750020



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: 9/17/07

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4941:04-00

Legend:

A =

B =

C =

D =

I =

W =

Z =

a =

c =

d1 =

d2 =

d3 =

d4 =

e =

f =

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x =

Dear :

This is in response to your letter dated September 26, 2006, as supplemented, requesting rulings under section 4941, section 4946, and the income tax provisions of the Internal Revenue Code (hereafter "Code").

I is a trust that was organized on date a. I is exempt under section 501(c)(3) of the Code and is a private foundation. A is the creator of I and the settlor of the

underlying trust agreement. A is contemplating lifetime and testamentary gifts of Z stock to I.

The trustee of I is W, a national banking institution. The trust officers at W who are responsible for administering I do not own stock in Z in their individual capacities. Further, no other employees of W involved in administering I will own Z stock in their individual capacities.

Z's stock is publicly traded on the c. Z has millions of shares outstanding.

A has served as an officer/employee of Z prior to d1. A served on Z's board of directors from d2 until d3. A is not currently serving on Z's board of directors and has no plans to do so. None of A's lineal descendants have served on Z's board of directors. A currently holds approximately e percent of the Z stock through entities controlled by him. A is the founder of Z.

It is proposed that A, through A's revocable trust, contribute x shares of Z stock to I as a charitable contribution. I then intends to offer to sell such shares of Z stock owned by it to Z at fair market value. The board of directors would vote on whether to redeem the shares pursuant to I's offer. Z would not be obligated to redeem the shares pursuant to I's offer. The proceeds from the redemption of stock by Z would provide I with funds to further its charitable purposes. A desires to further his charitable intentions during his lifetime and does not want to wait until his death to make a significant contribution to I.

After A's death, A's revocable trust will transfer approximately 6 times x shares of Z stock to I. I then intends to offer to sell such shares of Z stock owned by it to Z at fair market value. The Board of Directors of Z would then vote on whether to redeem such shares pursuant to I's offer. Z would not be obligated to redeem the shares upon I's offer. A is also aware that the ownership of the Z stock by his estate after his death may create a problem of excess business holdings at that time. Any redemption of the Z stock at the time of the inter vivos gift of x shares of stock is also intended to diminish that excess business holdings problem. Thus, A wishes to know whether the redemption of stock creates self-dealing issue under section 4941 of the Code.

For purposes of this ruling, you have also disclosed that Article (k) of the trust agreement provides for a committee of Trust Advisors to I (hereafter, "Trust Advisors") which will generally provide non-binding advice to the trustee. A is the chairman of the Trust Advisors until his death. Three sons of A are also trust advisors. B is a trust advisor and will assume the position of chairman of the Trust Advisors on A's death. B is also Chairman of the Board of Directors and Chief Executive Officer of Z. The fifth

person on the Trust Advisors replacing A on the Trust Advisors Committee after his death is C who is also on the Board of Directors of Z. The three sons of A and also C own relatively small amounts of stock of Z. B owns 2.7 percent of stock of Z.

The trust agreement of I names 3 persons as Co-Trustees (the "Voting Co-Trustees") of I solely for the purpose of voting the Z stock held directly or indirectly by I. Those 3 persons are one of the sons of A plus B and D. D does not own Z stock. Amendment 6 to the I Trust Agreement dated June 19, , provides that notwithstanding anything in the Trust Agreement or any other amendment thereto to the contrary, the following shall govern the voting of Z stock held, directly or indirectly by this Trust:

It is Settlor's intention that three (3) individuals vote all . . . (Z) Stock held, directly or indirectly, hereunder. Such persons shall be Co-Trustees of this trust solely for the purpose of voting such shares of . . . (Z) stock. Such individual Co-Trustees (or their successors) shall act by vote of a majority of such individual Co-Trustees then serving.

. . . C will shall act as a voting Co-Trustee only so long as he is an advisor to the corporate trustee of this Charitable Trust.

The corporate trustee shall be under no duty to make any inquiry, determination, or recommendations with respect to the propriety of the vote by such individual Co-Trustees, nor shall the corporate Trustee be liable for any loss resulting to the trust by reason of their voting decisions. The Settlor expressly relieves the corporate trustee from any responsibility with respect to the vote by such individual Co-Trustees.

A is the largest shareholder of Z stock holding actually or constructively e percent of the stock. The next largest shareholder holds 7.2 percent of Z stock and is unrelated to A. The information you submitted indicates that A has been a long time officer/employee of Z ending in d4. Further, A has been on Z's board of directors from d2 until d3. The Proxy statement attached to the information submitted describes A as "Chairman Emeritus of the Company since d4." The information also suggests that A has been the largest shareholder of Z for some time. In 1993, A held almost f percent of the Z stock and was by far the largest single shareholder. A is g years of age.

You have represented that A does not have practical or effective control of Z even though he is the largest single shareholder. In essence you assert that A does not have a relationship or affiliation with B and/or C which would enable A to influence B or C. Further, you assert that even if A could influence B and C they make up only 20

percent of the directors of Z.

You also represent that A alone or with the next largest shareholder could not combine to control Z since the two together hold less than 35 percent of the stock. Further, you assert that this shareholder is an institutional investor with no relationship with A.

You have requested the following rulings on behalf of T:

1. The Z stock owned by W officers and directors and the Z stock held by the trust officers and W as trustees of trusts owning such stock would not be included in the thirty-five percent test (as outlined below).
2. Z's purchase of the shares of Z stock from T during A's lifetime will not constitute an act of self-dealing under section 4941 of the Code.
3. Z's purchase of Z stock from T following A's death will not constitute an act of self-dealing under section 4941 of the Code.

LAW AND ANALYSIS

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d) of the Code defines self-dealing as any direct or indirect: (A) Sale or exchange, or leasing, of property between a private foundation and a disqualified person.

Section 4946 defines the term "disqualified person" for purposes of the application of section 4941 of the Code.

Section 4946(a)(1)(B) of the Code defines the term disqualified person to include a person who is a foundation manager within the meaning of section 4946(b)(1) of the Code.

Section 4946(b)(1) of the Code defines the term "foundation manager" as (1) and officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors or trustees of the foundation), and (2) with respect to any act, (or failure to act), the employees of the foundation having the authority or responsibility with respect to such act (or failure to act).

Section 53.4941(d)-1(b)(4) of the Treasury Regulations (hereafter "Regulations") provides that a transaction between a private foundation and an organization which is not controlled by the foundation (within the meaning of subparagraph (5) of this paragraph), and which is not described in section 4946(a)(1)(E), (F), or (G) because the persons described in section 4946(a)(1)(A), (B), (C), or (D) own no more than 35 percent of the combined voting power or profits or beneficial interest of such organization, shall not be treated as an act of indirect self-dealing between the foundation and the disqualified person solely because of the ownership interest of such person in such organization.

Section 53.4941(d)-1(b)(5) of the Regulations provides, in part, that for purposes of indirect self-dealing, an organization is controlled by a private foundation if the foundation or one or more of its foundation managers (acting only in such capacity) may, only by aggregating their votes or positions of authority, require the organization to engage in a transaction which if engaged in with the private foundation would constitute self-dealing. For purposes of this paragraph, an organization will be considered to be controlled by a private foundation or by a private foundation and disqualified person if such persons are able, in fact, to control the organization (even if their aggregate voting power is less than 50 percent of the total voting power of the organization's governing body) or if one or more of such persons has the right to exercise veto power over the actions of such organization relevant to any potential acts of self-dealing.

Section 53.4946-1(a)(5) of the Regulations provides that the term "combined voting power" includes the voting power represented by holdings of voting stock, actual or constructive, but does not include voting rights held only as a director or trustee.

Rev. Rul. 74-287, 1974-1 C.B. 327, discusses the disqualified person status of employees of a bank which is designated as the trustee of a private foundation. The ruling holds that although the employees of the bank delegated fiduciary responsibility for administering the trust are ultimately responsible to the board and the executive officers of the bank for actions taken with respect to the trust, they are free, on a day-to-day basis, to administer the trust and distribute the funds according to their best judgment and therefore have powers or responsibilities similar to those of trustees of the foundation.

Ruling Request #1

The redemption of stock of Z owned by I generally only becomes a problem under section 4941 of the Code if Z is a disqualified person with respect to I within the meaning of section 4946 of the Code. Section 4946(a)(1)(E) of the Code states that the

term "disqualified person" means a corporation of which persons described in paragraphs (A), (B), (C), or (D) own more than 35 percent of the voting power. As indicated earlier, A and his sons own not much over e percent of the stock of Z. B who is a foundation manager owns 2.7 percent of the stock of Z. C who is also a foundation manager owns 0.18 percent of Z stock. Thus, Z will not be deemed to be a disqualified person unless the other foundation manager, specifically W, holds a sizeable portion of Z's voting stock.

Section 53.4946-1(a)(5) of the Regulations provides that the term "combined voting power" includes voting power represented by holdings of voting stock, actual or constructive, but does not include voting rights held only as a director or trustee. Thus stock of Z owned by W (foundation manager of I) is not included in the 35 percent test of section 4946(a)(1)(E) of the Code to the extent that the stock held by W is held as a trustee or director for other entities. It has also been represented that W does not hold any Z stock in its individual capacity (e.g., for the bank's own investment purposes).

Rev. Rul. 74-287, 1974-1 C.B. 327, discusses the disqualified person status of employees of a bank which is designated as the trustee of a private foundation. The ruling holds that although the employees of the bank delegated fiduciary responsibility for administering the trust are ultimately responsible to the board and the executive officers of the bank for actions taken with respect to the trust, they are free, on a day-to-day basis, to administer the trust and distribute the funds according to their best judgment and therefore have powers or responsibilities similar to those of trustees of the foundation. Thus, such employees of the bank are disqualified persons within the meaning of section 4946(b)(1) of the Code.

As indicated above, section 53.4946-1(a)(5) of the Regulations provides that the term "combined voting power" includes voting power represented by holdings of voting stock, actual or constructive, but does not include voting rights held only as a director or trustee. Thus, stock of Z held by the W employees in a fiduciary capacity as trustee or director is not included in the 35 percent test of section 4946(a)(1)(E) even though the employees are treated as foundation managers of I under the holding of Rev. Rul. 74-287. Further it is represented that such employees of W serving to administer the private foundation on a day-to-day basis do not own any stock of Z in their individual capacities. Thus, there is no voting power attributable to them that is included for purposes of 35 percent voting test.

Ruling Request #2

As explained above, section 4946(a)(1)(E) of the Code defines the term "disqualified person" to include a corporation of which persons who are disqualified

persons hold more than 35 percent of the voting power. As described under the prior heading, **Ruling Request #1**, A and his sons and the foundation managers of I hold less than 35 percent of the combined voting power of I. Thus, in that Z is not a disqualified person, the sale of stock between I and Z is not an act of self-dealing.

A question has also been raised as to whether the sale of stock may be treated as an indirect act of self-dealing. Section 53.4941(d)-1(b)(4) of the regulations provides that a transaction between a private foundation and an organization which is not controlled by the foundation (within the meaning of subparagraph (5) of this paragraph), and which is not described in section 4946(a)(1)(E), (F), or (G) because the persons described in section 4946(a)(1)(A), (B), (C), or (D) own no more than 35 percent of the combined voting power or profits or beneficial interest of such organization, shall not be treated as an act of indirect self-dealing between the foundation and the disqualified person solely because of the ownership interest of such person in such organization.

Section 53.4941(d)-1(b)(5) of the Regulations discusses an indirect act of self-dealing where the private foundation controls another organization which is not necessarily a private foundation itself. The other foundation could be any kind of exempt non exempt organization. That regulation provides in part as follows:

For purposes of this paragraph, an organization will be considered to be controlled by a private foundation or by a private foundation and disqualified person if such persons are able, in fact, to control the organization (even if their aggregate voting power is less than 50 percent of the total voting power of the organization's governing body) or if one or more of such persons has the right to exercise veto power over the actions of such organization relevant to any potential acts of self-dealing.

We have considered various ways in which I acting together with A or with A and B may be said to control the actions of Z in fact, even though such persons (I plus A and B) do not control over 50 percent of the voting stock. See section 53.4941(d)-1(b)(8), example 8.

You explained in your letter of April 13, 2007, that Z has several policies and procedures in place to prevent one person or group of persons from controlling Z. Z is a public company subject to corporate governance listing standards of the c and rules of a federal regulatory commission. Further, in accordance with the director independence standard of the c, the Z board is comprised of a substantial majority of independent directors. Z has determined that eighty percent of the current directors are independent. Only directors B and C are deemed not independent. B is employed by Z as an officer. Thus, it is asserted that A does not control Z by virtue of any influence he

may exercise over B or C nor could B control Z by virtue of his position with Z as a director or an officer. Besides the fact that B and C both have fiduciary obligations when acting as directors, they make up only twenty percent of Z's directors. Thus, they do not have a sufficient vote on the board of directors to control Z.

You also represent that A alone does not own sufficient Z stock to "effectively" or "for practical purposes" control Z by virtue of owning e percent of Z stock. We also therefore conclude that when I receives the contribution of x shares of Z stock, as described above, I and A together will not control Z through the combination stock ownership of the two parties representing a little over e percent of the stock. Support for the conclusion (that there is no practical or effective control of Z through stock ownership) is based on the fact that the percentage ownership of Z stock held by A has been declining slowly over the years. It is also based on the intention of I to dispose of the Z stock.

Since we conclude that Z is not controlled by I within the meaning of section 53.4941(d)-1(b)(5) of the Regulations, the redemption of stock by Z from I is not a transaction that is treated as an indirect act of self-dealing under section 4941(d)(1) of the Code.

Thus, we find no control of Z by I and disqualified parties, A, A's sons, B, and/or C within the meaning of section 53.4941(d)-1(b)(5) of the regulations such that indirect self-dealing is deemed to apply on the redemption of stock by Z from I.

Ruling Request #3

We find that there is no self-dealing for the same reasons as discussed under the prior heading for **Ruling Request #2**.

Accordingly, we rule as follows:

1. The Z stock owned by W's officers and directors and the Z stock held by the trust officers and by W as trustees of trusts owning such stock is not included for purposes of calculating "thirty-five percent of the total combined voting power" provided in section 4946(a)(1)(E) of the Code.
2. Z's purchase of the shares of Z stock from I during A's lifetime will not constitute an act of self-dealing under section 4941 of the Code.
3. Z's purchase of the shares of Z stock from I following A's death will not constitute an act of self-dealing under section 4941 of the Code.

We express no opinion of the tax consequences to T under any other section of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Because it could help resolved questions concerning your federal income tax status, this ruling should be kept in your permanent records.

Pursuant to a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437